

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MELISSA ANN WRIGHT, Court Appointed  
Guardian of BROGAN ZANE WRIGHT,  
KAREN REIGER, and MIKE REIGER,

Plaintiff,

v.

WATKINS AND SHEPARD TRUCKING,  
INC., a Montana Corporation; GREGORY  
ANDREW BRITT, an individual, Does 1  
through 5, and Roes 1 through 5,

Defendants.

2:11-CV-01575-LRH-GWF

ORDER

This is a motor vehicle negligence case. Before the court is defendants Watkins and Shepard Trucking, Inc. (“Watkins”) and Gregory Britt’s (collectively “Defendants”) Limited Objection to Magistrate Judge’s September 18, 2015 Order addressing replacement expert testimony. Doc. #139.<sup>1</sup> Plaintiffs Melissa Ann Wright, Court Appointed Guardian of Brogan Zane Wright, Karen Reiger, and Mike Reiger (collectively “Plaintiffs”) filed a response (Doc. #140), to which Defendants replied (Doc. #141).

**I. Factual and Procedural Background**

After the death of Dr. John Siegler, one of Plaintiffs’ expert witnesses, who died unexpectedly in July 2014, Plaintiffs sought and received permission in October 2014 to designate a replacement expert to provide similar opinions premised on a similar foundation as

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<sup>1</sup> Refers to the Court’s docket number.

1 those rendered by the deceased expert. The new expert, Dr. Armando Miciano, was designated  
 2 in late 2014, completed his work in December and January, and was deposed on February 18,  
 3 2015. On August 12, 2015, Defendants filed a motion to strike the new expert's testimony  
 4 because his opinions were substantially different from those offered by the deceased expert.  
 5 Doc. #116. On September 18, 2015, Magistrate Judge Foley held a hearing on the motion to  
 6 strike. Doc. #136. Judge Foley granted the motion, subject to the condition that Plaintiffs may  
 7 seek an alternative opinion from the replacement witness regarding Brogan Wright's mental  
 8 and/or physical condition and future care needs in accordance with those previously rendered by  
 9 Plaintiffs' deceased expert. Doc. #136. On October 2, 2015, Defendants filed their limited  
 10 objection to the condition placed by Judge Foley on the granting of the motion to strike. Doc.  
 11 #139. On October 19, 2015, Plaintiffs filed their response (Doc. #140), and on October 28,  
 12 2015, Defendants filed their reply (Doc. #141).

## 13 **II. Discussion**

14 Local Rule IB 3-1 authorizes a district judge to reconsider any pretrial matter referred to  
 15 a magistrate judge pursuant to LR IB 1-3 where it has been shown that the magistrate judge's  
 16 order is clearly erroneous or contrary to law. This standard of review is significantly deferential  
 17 to the initial ruling. "A finding is clearly erroneous when although there is evidence to support  
 18 it, the reviewing body on the entire evidence is left with the definite and firm conviction that a  
 19 mistake has been committed." *United States v. Ressam*, 593 F.3d 1095, 1118 (9th Cir.2010)  
 20 (quotation omitted). The order "is afforded broad discretion, which will be overruled only if  
 21 abused." *Columbia Pictures, Inc. v. Bunnell*, 245 F.R.D. 443, 446 (C.D.Cal.2007). The Court  
 22 "may not simply substitute its judgment for that of the deciding court." *Grimes v. City & Cnty.*  
 23 *of San Francisco*, 951 F.2d 236, 241 (9th Cir.1991). "A decision is 'contrary to law' if it applies  
 24 an incorrect legal standard or fails to consider an element of the applicable standard." *Conant v.*  
 25 *McCoffey*, C 97-0139, 1998 WL 164946, at \*2 (N.D.Cal. Mar. 16, 1998).

26 In their objection, Defendants argue that the Magistrate Judge's Order allowing Plaintiffs  
 27 to seek an alternative opinion from Dr. Miciano regarding Wright's mental and/or physical  
 28 condition and future care needs in accordance with those previously rendered by Dr. Siegler

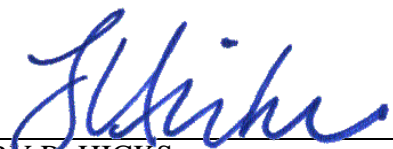
1 permits Plaintiffs to seek a wholesale substitution of new opinions neither contained in Dr.  
2 Miciano's report nor addressed in his deposition. Defendants contend there is no legal basis for  
3 the relief afforded to the Plaintiffs, the relief afforded is contrary to the law, and the Plaintiffs  
4 have been afforded relief they never sought.

5 The court has reviewed the documents and pleadings on file in this matter, as well as the  
6 transcripts of the hearings before Judge Foley, and finds that Defendants have failed to show that  
7 the condition placed in his order is either contrary to law or clearly erroneous. It also appears  
8 likely that Dr. Miciano was redeposed following Judge Foley's order and neither the subject  
9 matter of his testimony nor his testimony has met with further objection by the Defendants. In  
10 ruling on the motion to strike, it is clear that Magistrate Judge Foley carefully considered the  
11 positions of all parties, the late timing of Defendants' motion, and fashioned relief that was fair  
12 and reasonable to both sides. It was within Judge Foley's discretion to grant such relief, and it  
13 was neither contrary to law nor clearly erroneous.

14 Accordingly, Defendants' objection to the Magistrate Judge's September Order (Doc.  
15 #139) is DENIED.

16 IT IS SO ORDERED.

17 DATED this 13th day of January, 2016.

18   
19 LARRY R. HICKS  
20 UNITED STATES DISTRICT JUDGE  
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